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Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms

Note by the Secretary-General

By its resolution 61/89, the General Assembly requested the Secretary-General to establish a group of governmental experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, and to transmit the report of the group of experts to the Assembly for consideration at its sixty-third session. The present report is submitted pursuant to that request.

* A/63/150 and Corr.1.

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Report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms

Summary

The present report was prepared by the Group of Governmental Experts, established pursuant to General Assembly resolution 61/89, to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms

The Group noted that there were different motivations for conventional arms production and acquisition, and that the weapons being traded on the illicit market most often started out as legally traded weapons. In the light of the complexity of the issues inherent to the conventional arms transfers, the Group concluded that further consideration of those issues was required and that such efforts should be carried out, on a step-by-step basis, in an open and transparent manner, within the framework of the United Nations.

Acknowledging the need to prevent the diversion of conventional arms from the legal market into the illicit market, the Group stressed the need for all States to ensure that their national systems and internal controls are at the highest possible standards. It encouraged those States in a position to do so, to render assistance to States in need, upon request.

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Foreword by the Secretary-General

In 1997, a group of Nobel Peace Prize laureates from different regions and with varied histories published a compelling drive for a global arms trade treaty. They voiced their common concern regarding the destructive effects of the unregulated arms trade and advocated the adoption of an International code of conduct on arms transfers which, once adopted by all arms-selling nations, would benefit all humanity, nationalities, ethnicities, and religions (http://www.armstradetreaty.com/att/laureates.php). Since then, there has been growing recognition that, in order to safeguard international peace and security, there is an urgent need to further address the conventional arms trade.

I was, therefore, particularly gratified when on 6 December 2006, the General Assembly unanimously adopted resolution 61/89, by which it recognized that the absence of common international standards on the import, export and transfer of conventional arms was a contributory factor to conflict, the displacement of people, crime and terrorism, thereby undermining peace, reconciliation, safety, security, stability and sustainable development.

I was equally heartened when, by the same resolution, the General Assembly requested me to seek the views of Member States on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms. It is worth mentioning that more than 100 Member States submitted their views, most of which argued for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms.

The General Assembly also requested me to establish a group of governmental experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms. I am truly encouraged by the result of the work of the Group.

While fully cognizant of the complex and intricate nature of this subject, I am pleased to note the outcome of the work of the Group of Governmental Experts whereby it deems it necessary that further consideration of the issue should be carried out within the United Nations. I wish to express my appreciation to the members of the Group for completing their work and I commend their report to the General Assembly for its consideration.

Letter of transmittal dated 8 August 2008, from the Chairperson of the Group of Governmental Experts established pursuant to General Assembly resolution 61/89 to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, addressed to the Secretary-General

I have the honour to submit herewith the report of the Group of Governmental Experts to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms. The list of members of the Group which you appointed pursuant to operative paragraph 2 of General Assembly resolution 61/98 comprised the following experts:

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The report of the Group was prepared between February and August 2008, during which time the Group held three sessions in New York: the first from 11 to 15 February, the second from 12 to 16 May and the third and last session from 28 July to 8 August.

Participation was very active and the discussions were held in a frank and cordial manner. A number of experts submitted non-papers which enriched the discussions.

The members of the Group wish to express their appreciation for the assistance they received from members of the Secretariat of the United Nations, in particular, Pamela Maponga, who served as Secretary of the Group and Rachel Stohl, who served as consultant to the Group.

The Group is also grateful to the High Representative for Disarmament Affairs, Sergio de Queiroz Duarte, for his support.

I have been requested by the Group of Governmental Experts, as its Chairman, to submit to you, on its behalf, the present report which was approved by consensus.

(*Signed*) Roberto **García Moritán**
Chairperson of the Group of Governmental Experts established pursuant to General Assembly resolution 61/89 to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms

I. Introduction

1. On 6 December 2006, the General Assembly adopted resolution 61/89 entitled "Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms". By operative paragraph 2 of that resolution, the General Assembly requested the Secretary-General to establish a group of governmental experts, on the basis of equitable geographical distribution, informed by the report of the Secretary-General submitted to the General Assembly at its sixty-second session, to examine, commencing in 2008, the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, and to transmit the report of the group of experts to the Assembly for consideration at its sixty-third session.

2. Pursuant to that request, the Secretary-General established a Group of Governmental Experts comprising experts from the following countries: Algeria, Argentina, Australia, Brazil, China, Colombia, Costa Rica, Cuba, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Kenya, Mexico, Nigeria, Pakistan, Romania, the Russian Federation, South Africa, Spain, Switzerland, Ukraine, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The Group, which was chaired by Ambassador Roberto García Moritán of Argentina, met in three sessions, all of which were held in 2008, at United Nations Headquarters, from 11 to 15 February, 12 to 16 May and 28 July to 8 August, respectively.

3. The work of the Group was largely informed by the report of the Secretary-General (A/62/278 (Parts I and II) and Adds. 1-4), prepared pursuant to operative paragraph 1 of resolution 61/89, whereby the General Assembly requested him to seek the views of Member States on the feasibility scope and draft parameters for a comprehensive legally binding instrument establishing common international standards for the import, export and transfer of conventional arms and to submit a report to the General Assembly at its sixty-second session. A total of 101 Member States and 2 regional organizations, namely the Caribbean Community and the European Union, submitted their views to the Secretary-General. The report of the Secretary-General can also be found on the website of the Office for Disarmament Affairs (http://disarmament.un.org/cab/ATT/index.html).

4. The Group of Governmental Experts also benefited from two studies published by the United Nations Institute for Disarmament Research. One focused on an Analysis of States' Views on an Arms Trade Treaty and the other on Implications of States' Views on an arms trade treaty.[1]

5. The Group also benefited from a study prepared by the consultant, Rachel Stohl, on a number of existing subregional, regional, and international instruments, arrangements and/or documents that aim at regulating the international conventional arms trade or enhancing transparency. The Group welcomed a presentation made by the Secretary of the 2006 Group of Governmental Experts on the continuing operation of the United Nations Register of Conventional Arms and its further development, Nazir Kamal. While considering the above-mentioned presentations, a variety of views was also expressed.

[1] See http://www.unidir.ch/pdf/ouvrages/pdf-1-92-9045-008-A-en.pdf and www.unidir.ch/pdf/ouvrages/pdf-1-92-9045-008-B-en.pdf, respectively.

II. Background

6. Since the establishment of the United Nations, various United Nations bodies, including the General Assembly and its special sessions devoted to disarmament, the Security Council and the United Nations Disarmament Commission, have adopted numerous resolutions, guidelines and decisions related to conventional arms transfers, in accordance with States' obligations under the Charter of the United Nations, in order to promote international peace and security.

7. The United Nations has adopted two instruments aimed at promoting transparency on military matters and conventional arms transfers, namely, the 1980 United Nations Standardized Instrument for Reporting Military Expenditures and, in 1991, the United Nations Register of Conventional Arms. In addition in 1991, the five Permanent Members of the Security Council adopted Guidelines for Conventional Arms Transfers and the General Assembly (in its resolution 46/36 L), reiterated its 1988 conviction, as expressed in its resolution 43/75 I, that conventional arms transfers in all their aspects deserve serious consideration by the international community.

8. In 1996, the Disarmament Commission adopted Guidelines for international arms transfers,[2] which in summary included the following principles: respect for the principles and purposes of the Charter of the United Nations, including the right to self-defence, the sovereign equality of all its members, non-interference in the internal affairs of States, and respect for human rights; the need for transparency in arms transfers; prohibition and eradication of illicit arms trafficking; ensuring that the level of armaments is commensurate with their legitimate self-defence and security requirements, including their ability to participate in United Nations peacekeeping operations; exercising restraint over the production and procurement of arms as well as transfers; taking into account economic and commercial considerations as well as the maintenance of international peace and security and efforts aimed at easing international tensions, promoting social and economic development, peacefully resolving regional conflicts, preventing arms races and achieving disarmament under effective international control; ensuring (by both the exporter and importer) that arms exports do not contribute to regional instability, conflict or to illicit arms trafficking; and ensuring that arms transfers are not used as a means to interfere in the internal affairs of other States.

9. The United Nations has also examined the destabilizing effects of the excessive and uncontrolled accumulation and spread of small arms and light weapons. In May 2001 (by its resolution 55/255), the General Assembly adopted the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (United Nations Firearms Protocol). In July 2001, the United Nations adopted the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.[3] This was followed by the adoption, on 8 December

[2] Report of the Disarmament Commission, *Official Records of the General Assembly, Fifty-first Session, Supplement No. 42* (A/51/42); http://documents-dds-ny.un.org/doc/UNDOC/GEN/N96/127/60/pdf/N9612760.pdf.

[3] See *Report of the United Nations Conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects, New York, 9-20 July 2001* (A/Conf.192/15), chap. IV, para. 24.

2005, of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (A/60/88 and Corr.2, annex). At the conclusion of the third biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held from 14 to 18 July, 2008, States renewed their commitment to eradicate the illicit trade in small arms and light weapons in all its aspects.

10. Over the past three decades, international, regional and subregional organizations have undertaken initiatives addressing elements of the conventional arms trade. Experts discussed those instruments, arrangements and documents, noting that their scope varies and some also include transfer criteria and guidelines.

III. Trends in the international arms trade

11. In an effort to better understand the rationale for an arms trade treaty, experts also discussed current issues and trends in the international arms trade.

12. Experts observed that globalization had changed the dynamics of international arms trade. They noted that the types of weapon systems, equipment and their components being manufactured in cooperation, under joint ventures and licensing was increasing and that most arms-producing States were increasingly relying on technology transfers and upgrades from external sources, rather than from their own indigenous production.

13. Furthermore, experts acknowledged that on certain occasions, Security Council arms embargoes were violated. They observed that the weapons traded in the illicit market frequently come from unlicensed production and transfers, unlawful re-export and illegal brokering, and unsecure weapons storage and transportation. In addition, they observed that such weapons could be used for terrorist acts, organized crime and other criminal activities.

14. Experts also observed that global arms production and trade constituted a significant contribution to the economy and employment in a number of countries. At the same time, trade in arms had become globalized and more competitive. It was also recognized that there were different motivations for conventional arms production and acquisition.

IV. Feasibility of a comprehensive legally binding instrument establishing common international standards for the import, export and transfer of conventional arms

15. In accordance with its mandate, the Group examined, without prejudice to the eventual outcome and with differing views, a large variety of substantive issues related to the feasibility, scope and draft parameters for a comprehensive legally binding instrument establishing common international standards for the import, export and transfer of conventional arms. The Group also recognized that numerous unresolved issues in the global conventional arms trade required further discussion. It also recognized that the question of feasibility had both political and technical dimensions and that it impacted the security concerns of all States. Some experts

expressed the view that a potential legally binding arms trade treaty was not the only option for addressing the issue.

16. It was noted that the feasibility of a potential arms trade treaty would be dependent on establishing its collectively agreed objectives, its practical applicability, its resistance to political abuse and its potential for universality. Any consideration of the feasibility of a potential arms trade treaty was seen to be dependent on its scope and parameters, which were seen as interrelated factors that would require open, transparent, inclusive and universal discussions.

17. The Group recognized that the key condition to answer the question of feasibility would lie with the clear definition of the fundamental goals and objectives of a potential arms trade treaty. It was noted that a broad range of factors could be considered, including regional stability, armed conflicts, issues relating to unlawful transfers to non-State actors (understood as individuals or entities not acting under the lawful authority of any State), international human rights law and international humanitarian law and social and economic development, among others. To be feasible, a potential arms trade treaty would need clear definitions and be fair, objective, balanced, non-political, non-discriminatory and universal within the framework of the United Nations.

18. It was also mentioned that, were an arms trade treaty to be considered feasible, it would need to reflect respect for the sovereignty of every State, without interfering in the internal affairs of States or their constitutional provisions, and respect for their territorial integrity. Exclusively internal transfers or national ownership provisions, including national constitutional protections on private ownership within that State's territory, should not fall under an arms trade treaty.

19. Experts emphasized the importance of objective and agreed global criteria that reflect respective responsibilities of exporters and importers. Experts mentioned issues that were relevant to the discussion of feasibility, such as operational mechanisms, including information-sharing and exchange, reporting mechanisms and international cooperation and assistance.

V. Scope of a comprehensive legally binding instrument establishing common international standards for the import, export and transfer of conventional arms

20. Experts considered, without prejudice to the outcome and with differing views, the types of weapons and activities and/or transactions that could potentially be included or not within the scope of a potential arms trade treaty. In addition, a variety of views were presented regarding whether the scope of the treaty was to be focused on "common international standards" of transfer or whether it was to consider the types of weapons and activities and/or transactions that could be potentially included within the scope of the arms trade treaty.

21. No single existing instrument contains a list that might encompass the range of options raised in the submissions from Member States regarding the scope of a potential arms trade treaty. The Group considered the seven categories of the United Nations Register of Conventional Arms, small arms and light weapons and whether categories, such as ammunition, explosives, components, defence services, technology related to the manufacture of weapons and ammunition should be

included. The Group discussed the balance between broad definitions that remain adaptable to technological advances and more detailed definitions that potentially require more regular review. In all cases, clarity in terms of purpose and implementation would be necessary. It was noted that the particular nature of the lawful trade in sport and hunting arms should be taken into account in a potential arms trade treaty.

22. Experts discussed the types of activities/transactions that might be included in a potential arms trade treaty. Some of the activities discussed included the following: exports, imports, transfers, re-exports, transit, trans-shipment, licensing, transportation, technology transfer and manufacturing and foreign licensed production, as well as countering illegal re-exports, unlicensed production and transfers, illicit arms brokering, and transfers of arms to non-State actors. Experts also mentioned stockpiles and production of conventional weapons, while respecting the rights of States with regards to the non-interference in their internal affairs. Experts also discussed existing definitions of some of the activities.

23. Due to the fact that small arms and light weapons, among conventional arms, have caused immense human suffering and political instability in different parts of the world, experts expressed the view that combating illicit trade and unlawful transfers to non-State actors must be adequately addressed.

VI. Draft parameters of a comprehensive legally binding instrument establishing common international standards for the import, export and transfer of conventional arms

24. Experts agreed that principles enshrined in the Charter of the United Nations would be central to any potential arms trade treaty. The Group also discussed, with differing views, the applicability of existing international human rights law and international humanitarian law, while bearing in mind that any potential arms trade treaty should remain objective, non-discriminatory and resistant to political misuse in recognition of the fact that any potential arms trade treaty would need to respect the sovereignty and rights of every State under the Charter of the United Nations. In the same vein, experts discussed other possible parameters, including the resolutions of the General Assembly, the Guidelines adopted by the five Permanent Members of the Security Council and the Disarmament Commission Guidelines for international arms transfers, with a view to examining their potential relevance to the parameters of a potential arms trade treaty.

25. Experts also raised the need to address the following thematic aspects: terrorism, organized crime and other criminal activities; maintaining regional stability; promoting socio-economic development; unlawful transfers to non-State actors, unauthorized re-export, unlicensed production, illicit brokering; right to manufacture and import; end use/end-user assurances; diversion; and compliance with Security Council arms embargoes and other existing international obligations as a necessary condition for transfers.

26. The Group also examined operational mechanisms, including information-sharing and exchange, reporting mechanisms and international cooperation and assistance. The Group considered whether and, if so, how a potential treaty might promote multilateral and ad hoc exchanges between States on a periodic or case-by-

case basis, within an appropriate framework and how States could be assisted in implementing and evaluating a potential treaty. This could include national points of contact, promotion of regular implementation and transparency reports.

VII. Conclusions and recommendations

27. **In view of the complexity of the issues of conventional arms transfers considered by the Group on behalf of the Secretary-General and the General Assembly, further consideration of efforts within the United Nations to address the international trade in conventional arms is required on a step-by-step basis in an open and transparent manner to achieve, on the basis of consensus, a balance that will provide benefit to all, with the principles of the Charter of the United Nations at the centre of such efforts.**

28. **The Group recognized that there are different motivations for conventional arms production and acquisition. The Group observed that the weapons being traded in the illicit market can be used for terrorist acts, organized crime and other criminal activities. In addition, the Group acknowledged the need to prevent the diversion of conventional arms from the legal into the illicit market.**

29. **The Group acknowledged the respective responsibilities of exporters and importers. In order to begin improving the current situation, the Group recognized the need for all States to ensure that their national systems and internal controls are at the highest possible standards, and that States in a position to do so could render assistance in this regard, upon request.**